90-589

No. ———

FILED
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

THE TORO COMPANY,

Petitioner

v.

WHIPPLE VAN NESS JONES, JR., and
MARYANN CASSEAUX JONES, HIS WIFE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Whether a party waives its right to challenge an inconsistent jury verdict by failing to raise an objection before the jury is discharged.

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MARYANN CASSEAUX JONES, HIS WIFE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Toro Company [1] petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App., *infra*, 1a-3a) is unreported. The district court did not issue an opinion.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 1990 (App., *infra*, 4a-5a). On August 13, 1990, Justice Kennedy extended the time for filing a petition for a writ of certiorari to and including October 9, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[1] Pursuant to Rule 29.1 of the Rules of this Court, Toro states that it has no parent corporation and no subsidiary corporation other than wholly owned subsidiaries.

CONSTITUTIONAL PROVISION AND RULE INVOLVED

The Seventh Amendment to the United States Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Rule 49 of the Federal Rules of Civil Procedure provides:

> **(a) Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.
>
> **(b) General Verdict Accompanied by Answer to Interrogatories.** The court may submit to the jury, together with appropriate forms for a gen-

eral verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

STATEMENT

This case arises out of a fire that occurred at the home of the respondents, north of Tallahassee, Florida, on February 14, 1987. On that date, after respondent Van Jones had completed mowing a portion of his property with his Toro lawn mower and was refueling the machine, "a fire somehow started around the mower's engine." App., *infra*, 2a. As a result of the fire, Mr. Jones sustained second and third degree burns over 37 percent of his body.

The Joneses filed suit against both Toro and Mulvaney's, Inc., the seller of the lawn mower, in Florida state court. After Mulvaney's was dismissed from the lawsuit without prejudice, Toro removed the case to the United States

District Court for the Northern District of Florida on the basis of diversity jurisdiction.

In their complaint, the Joneses alleged both strict liability and negligence on the part of Toro. Following a week-long trial, the case was submitted to the jury by way of special verdicts pursuant to Fed. R. Civ. P. 49(a). Although the jury found that there was no design defect in the mower, it nevertheless concluded that Toro had been negligent. App., *infra*, 6a. The jury thus responded to the relevant special verdicts as follows:

> 1. Did The Toro Company place the lawnmower on the market with a defect which was a legal cause of damage to Van Jones?
>
> Yes ____ No X
>
> 2. Was there negligence on the part of The Toro Company which was a legal cause of damage to Van Jones?
>
> Yes X No ____

Id. The jury also found Mr. Jones 15 percent comparatively negligent. As a result, the district court entered a verdict against Toro in the total amount of $1,026,800.[2]

Toro filed timely post-trial motions seeking a new trial or, in the alternative, a remittitur. Among other things, Toro argued that the jury's verdict was fatally inconsistent because, unless Toro's product was defective, there was no basis in the record for a finding of negligence on its part. The district court denied Toro's post-trial motions without opinion on August 4, 1989.

The Eleventh Circuit affirmed. The court of appeals rejected Toro's claim of inconsistency of the verdict on the ground that Toro had waived that objection by failing to raise it before the jury was discharged:

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[2] The jury had concluded that Mr. Jones had sustained damages in the amount of $1,058,000 and that Mrs. Jones had been damaged to the extent of $150,000.

> The Eleventh Circuit follows the rule that a failure to challenge the consistency of a 49(a) verdict before the jury is excused constitutes waiver of a later challenge. *See Golub v. J.W. Gant & Assocs.*, 863 F.2d 1516, 1521 n.4 (11th Cir. 1989); *ITEL Capital Corp. v. Cups Coal Co., Inc.*, 707 F.2d 1253, 1261 (11th Cir. 1983). Because Toro did not raise its objection in the district court before the jury was excused, Toro's objection to the consistency of the verdict is waived on appeal.

App., *infra*, 2a.

REASONS FOR GRANTING THE PETITION

The decision below squarely conflicts with the rule in the majority of the circuits that a party may challenge inconsistent special verdicts rendered pursuant to Rule 49(a), Fed. R. Civ. P., without having objected to the inconsistency of the verdict before the jury was discharged. Resolution of this question is essential to the uniform and effective application of Rule 49. In addition, imposition of a strict "waiver rule," precluding review of inconsistent verdicts, seriously implicates the constitutional right to a jury trial. Finally, the courts below failed to recognize the clear distinction between Rule 49(a) and 49(b) and, in so doing, undermined the utility of special verdicts in resolving complex disputes.

1. There is a clear conflict among the courts of appeals regarding the question presented by this case. The United States Courts of Appeals for the Third, Fourth, Fifth, Ninth and Tenth Circuits have all correctly held that Rule 49(a) does not require a party to object to inconsistent special verdicts before the jury is discharged on pain of forfeiting its right to reconciliation or, if reconciliation is impossible, to a new trial. *Bonin v. Tour West, Inc.*, 896 F.2d 1260, 1263 (10th Cir. 1990); *Pierce v. Southern Pac. Transp. Co.*, 823 F.2d 1366, 1370 (9th

Cir. 1987);[3] *Ladnier v. Murray*, 769 F.2d 195, 198 n.3 (4th Cir. 1985); *Malley-Duff & Assocs., Inc. v. Crown Life Ins. Co.*, 734 F.2d 133, 144-45 (3d Cir.), *cert. denied*, 469 U.S. 1072 (1984); *Mercer v. Long Mfg. N.C., Inc.*, 671 F.2d 946, 947-48 (5th Cir. 1982).

On the other hand, the Eleventh Circuit has summarily held in the case at bar, relying on *Golub v. J.W. Gant & Assocs.*, 863 F.2d 1516, 1520 n.4 (11th Cir. 1989), and *Itel Capital Corp. v. Cups Coal Co.*, 707 F.2d 1253, 1261 (11th Cir. 1983), that a strict "waiver rule" applies. Although the Eleventh Circuit acknowledges the contradictory precedent on this issue, *see Golub v. J.W. Gant & Assocs.*, 863 F.2d at 1520 n.4, it continues to follow the rule that "all challenges to the consistency of special verdicts must be raised before the jury is excused." *Id.* (citing *Itel Capital Corp. v. Cups Coal Co.*, 707 F.2d at 1261). The First Circuit also applied the "waiver rule" in *Skillin v. Kimball*, 643 F.2d 19, 19-20 (1st Cir. 1981).[4] Other courts also have acknowledged the split. *See, e.g., Rivera v. La Porte*, 896 F.2d 691, 695 n.1 (2d Cir. 1990).

2. The significance of the question presented by this petition is magnified because application of the "waiver rule" impinges on the constitutional right to a jury trial. As the Fifth Circuit explained in *Mercer v. Long Mfg. N.C., Inc.*, 671 F.2d at 948 n.1 (quoting *Griffin v. Ma-*

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[3] In *Air-Sea Forwarders, Inc. v. Air Asia Co.*, 880 F.2d 176, 182-83 n.6 (9th Cir. 1989), *cert. denied*, No. 89-885 (Jan. 22, 1990), the Ninth Circuit noted that an aspect of the *Pierce* decision not relevant to the issue presented here was inconsistent with subsequent Supreme Court precedent and rejected *Pierce* to that extent.

[4] It is unclear from the court's opinion in *Skillin*, however, whether the submission in that case was pursuant to Rule 49(a) or Rule 49(b). *See Diamond Shamrock Corp. v. Zinke & Trumbo, Ltd.*, 791 F.2d 1416, 1430 n.6 (10th Cir.) (McKay, J., concurring in part and dissenting in part), *cert. denied*, 479 U.S. 1007 (1986). The significance of the distinction between Rule 49(a) and 49(b) is discussed at pages 10-11, *infra*.

therne, 471 F.2d 911, 915 (5th Cir. 1973) (citations omitted)):

> The legal error resulting from the entry of a judgment based on inconsistent special interrogatories is one which undermines the validity and integrity of the judgment and may, in fact, run afoul of the Seventh Amendment by allowing the District Court to usurp the jury's function. The Seventh Amendment creates a delicate balance.
>
> > [I]f there is a view of the case which makes the jury's answers consistent, the court must adopt that view and enter judgment accordingly . . . . If on review of the District Court's judgment we find that there is no view of the case which makes the jury's answers consistent and that the inconsistency is such that the special verdict will support neither the judgment entered below nor any other judgment, then the judgment must be reversed and the cause remanded for trial anew.

See also Ladnier v. Murray, 769 F.2d at 198 n.3 (quoting *Mercer v. Long Mfg. N.C., Inc.*, 671 F.2d at 948 n.1).

The right of a party to seek reconciliation of an inconsistent jury verdict or, if reconciliation is not possible, a new trial, is firmly grounded in the Seventh Amendment right to a jury trial. "The right to a jury trial guaranteed by the Seventh Amendment requires us 'to reconcile apparently conflicting answers if at all possible and thus validate the verdict.' If, after careful consideration, the answers cannot be reconciled, a new trial must be ordered." *Bourque v. Diamond M. Drilling Co.*, 623 F.2d 351, 353 (5th Cir. 1980) (citations omitted). *See also Gallick v. Baltimore & Ohio R.R.*, 372 U.S. 108, 119 (1963); *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364 (1962); *Pierce v. Southern Pac. Transp. Co.*, 823 F.2d at 1370; *cf. Schaafsma v. Morin Vermont Corp.*, 802 F.2d 629, 635 (2d Cir. 1986) ("[i]n fairness to trial courts *and in order to preserve parties' Seventh Amendment rights*, appellate courts 'struggle' to find a way of reconciling seemingly incon-

sistent interrogatory answers and verdicts") (emphasis added) (discussing Rule 49(b)).

Under Rule 49(a), the trial court is expected to " 'translate' the jury's findings on controlling fact issues into a judgment." *Downs v. Gulf & Western Mfg. Co.*, 677 F. Supp. 661, 668-69 (D. Mass. 1987); *see* 5A J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 49.02 at 49-9 (2d ed. 1990) (emphasis added) ("In the special verdict the jury reports back to the court on issues of fact which are then translated into a judgment by the court's application of the law. The procedure leaves to the trial judge the responsibility of applying appropriate legal principles to *the facts found by the jury*"). If the jury's fact findings are inconsistent, the trial court cannot perform its task unless it usurps the jury's fact-finding function. *Cf. Solimene v. B. Grauel & Co.*, 399 Mass. 790, 800-01, 507 N.E.2d 662, 669 (1987) ("[i]f the answers cannot be harmonized with the evidence and the instructions, and . . . the jurors have been discharged and cannot be reinstructed, a new trial is required because it is the jurors' constitutional responsibility to resolve the facts") (interpreting Mass. R. Civ. P. 49(a) consistently with construction placed on federal counterpart because Massachusetts rules are patterned after the federal rules).[5]

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[5] As noted above, the inconsistency in the jury's verdict arises from its finding, on the one hand, of no defect in the product on which to base strict liability, and, on the other hand, its finding of negligence. A verdict based on this inconsistency cannot stand. *See, e.g., Consolidated Aluminum Corp. v. Braun*, 447 So.2d 391, 392 (Fla. Dist. Ct. App. 1984) ("[h]ow could Consolidated have been negligent in design and manufacture of a product which contains no defect?"). Respondents have contended that this inconsistency may be reconciled, if it is assumed that the jury found Toro negligent for failure to provide adequate warnings. The record, however, contains no evidence that Toro was negligent in providing warnings or that, if different warnings had been provided, they would have prevented the injury to Mr. Jones. *See Downs v. Gulf & Western Mfg. Co.*, 677 F. Supp. at 667 ("[a]lthough these or other scenarios may in fact approximate the jury's thinking, the court is not able to accept defendant's contentions. First of all, they are far

Although, to be sure, in certain circumstances, the constitutional right to a jury's verdict may be waived, at some point efficiency must yield to the right to a consistent verdict. *See generally United States v. Simon*, 839 F.2d 1461, 1472 (11th Cir.) ("[o]f course, we cannot elevate considerations of judicial economy to the point where they interfere with the appellants' constitutional rights"), *cert. denied*, 487 U.S. 1223 (1988). Here, the record of the proceedings discloses no evidence that petitioner deliberately waived its right to object to inconsistency of the jury's verdict. The district court did not itself note the inconsistency of the jury's findings and, accordingly, did not offer to submit the case to the jury for further deliberations. Under ideal circumstances, petitioner would have recognized the inconsistency immediately and requested resubmission before the jury was dismissed. The desirability of such a request, however, does not warrant imposition of the harsh penalty of waiver for its lack. *Mercer v. Long Mfg. N.C., Inc.*, 671 F.2d at 947 ("[w]hile there are many practices which we recommend parties follow, extolling the virtues of a procedure is not equivalent to mandating that it be followed with the dire consequence of waiver for failure to adopt the practice").

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more resourceful, and subtle, than the theories or evidence presented at trial. Scant evidence or argument was directed to the adequacy of warnings, and what little there was failed to make the 'fine distinctions' between theories and degrees of fault suggested now by defendant"). Respondents also have suggested that the jury may have erroneously but reasonably believed that different standards obtain for determining the existence of a product defect under a strict liability theory as opposed to negligence. To the contrary, it cannot reasonably be presumed that such an abstruse distinction, even if it existed in the law, was derived by a jury of laypersons from the verdict form before them or the trial court's instructions. *Cf. Bonin v. Tour West, Inc.*, 896 F.2d at 1263 (reversing attempted reconciliation where the language of questions submitted to the jury was "too similar" to hold that the jury distinguished between negligence that caused the accident and negligence that caused the injuries).

3. The "waiver rule" not only implicates constitutional rights, but also thwarts the proper functioning of Rule 49(a), which has been described as "a handy, workable, reasonably simple, over-ignored tool . . . remarkably effective in fact-resolution and the matching of such resolution against known or changing, or contradictory legal principles." Brown, *Federal Special Verdicts: The Doubt Eliminator*, 44 F.R.D. 338 (1968).

The courts below erroneously failed to distinguish between the requirements of Rule 49(a) and 49(b).[6] As discussed below, the procedures set forth in the two subsections are entirely different. *See Downs v. Gulf & Western Mfg. Co.*, 677 F. Supp. at 668 ("[i]t is helpful at the start to distinguish between Rule 49(a) and Rule 49(b) because they govern different sorts of special verdicts and may give rise to different legal results").

> Rule 49(b) offers, so far as I can see, nothing but trouble because it seeks to meld a general verdict and special answers with the high likelihood of conflict which extinguishes both. Rule 49(a), on the other hand, if used with skill and resourcefulness melds the general *charge* (not verdict) with the special answers to specific controlling issues of fact or legal fact.

Brown, 44 F.R.D. at 339-40 (emphasis in original). "As a result, [under Rule 49(a)] there could be no inconsistency with a general verdict such that the court, in Rule 49(b)'s express words, 'shall return the jury for further consideration of its answers [and verdict] . . .'—a command absent entirely from Rule 49(a)." *Downs v. Gulf & Western Mfg. Co., Inc.*, 677 F. Supp. at 669. In-

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[6] The Eleventh Circuit in *Itel*, 707 F.2d at 1261, arrived at its erroneous conclusion with regard to Rule 49(a) by applying the Fifth Circuit's reasoning in *Stancill v. McKenzie Tank Lines, Inc.*, 497 F.2d 529, 534-35 (5th Cir. 1974), which arose under Rule 49(b). Ironically, the Fifth Circuit, on which the *Itel* court expressly relied, has long since held that there is no waiver of the right to object to inconsistent verdicts under Rule 49(a). *See Mercer v. Long Mfg. N.C., Inc.*, 671 F.2d at 947-49.

deed, it is precisely because of the absence from Rule 49(a) of any comparable provision for resubmission to the jury that the majority of the courts of appeals that have considered the issue have held, as discussed above, that a party may object to inconsistencies in a verdict post-trial. *See Bonin v. Tour West, Inc.*, 896 F.2d at 1262-63; *Malley-Duff & Assocs., Inc. v. Crown Life Ins. Co.*, 734 F.2d at 145; *Mercer v. Long Mfg.*, 671 F.2d at 948 and n.1. *See also Downs v. Gulf & Western Mfg. Co., Inc.*, 667 F. Supp. at 669-70.[7]

The instant case demonstrates the vice in applying the strict "waiver rule." Since the factual basis for the verdict is unclear, it is impossible to determine whether the verdict is legally supportable. The jury's findings, as well as the district court's application of law, are insulated from meaningful review. These defects subvert the purpose of Rule 49(a)—to enable "the public, the parties and the court to see what the jury really has done," 5A *Moore's Federal Practice* ¶ 49.02 at 49-5 to 49-6 (quoting Sunderland, *Verdicts, General and Special*, 29 Yale L.J. 253, 259 (1920))—and undermine the rule's utility in complex litigation. *See Downs v. Gulf & Western Mfg. Co.*, 677 F. Supp. at 669 (citing Brown, *supra*, 44 F.R.D. at 344-45 (Rule 49(a) special verdicts suited for product liability suits)); *see generally* 5A *Moore's Federal Practice* ¶ 49.02 at 49-6 to 49-7 & n.6. Review by this Court is warranted for these reasons as well.

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[7] Conversely, the courts have held that the doctrine of waiver *does* apply under Rule 49(b). *See, e.g., Minpeco, S.A. v. Hunt*, 718 F. Supp. 168, 181 n.17 (S.D.N.Y. 1989).

In addition, Rule 49(a) expressly provides for a waiver of the right to a jury trial on the particular "issue of fact raised by the pleadings or by the evidence" if the party fails to demand its submission to the jury before the jury retires. The fact that the drafters of Rule 49(a) expressly provided therein for one sort of waiver undercuts the notion that a waiver of another type, *not* expressly provided for, nevertheless should be implied.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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October 1990

APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 89-3764

Non-Argument Calendar

D. C. Docket No. TCA 88-40169

WHIPPLE VAN NESS JONES, JR.,
MARYANN CASSEAUX JONES, his wife,
Plaintiffs-Appellees,

versus

THE TORO COMPANY,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(May 24, 1990)

Before FAY, EDMONDSON and COX, Circuit Judges.

PER CURIAM:

This is a products liability action brought in federal court under diversity jurisdiction. The Toro Company ("Toro"), defendant below, appeals the district court's denial of its motion for a new trial. The jury awarded plaintiffs Van and Maryann Jones damages for injuries

suffered as a result of Van's being burned; Van was refueling his Toro lawn mower when a fire somehow started around the mower's engine. The jury found that Toro was not strictly liable, specifically finding no design defect in the mower. The jury found, however, that Toro was negligent.

Toro argues that this verdict was inconsistent because there was no evidence in the record to support a finding of negligence absent a design defect. Because the case also presents a question about certain warnings that ought to have been given by Toro, we doubt that the verdict was inconsistent; but we need not decide that matter. The jury issued the special verdict in the form of answers to questions presented by the court pursuant to Federal Rule of Civil Procedure 49(a). The Eleventh Circuit follows the rule that failure to challenge the consistency of a 49(a) verdict before the jury is excused constitutes waiver of a later challenge. *See Golub v. J.W. Gant & Assocs.*, 863 F.2d 1516, 1521 n.4 (11th Cir. 1989); *ITEL Capital Corp. v. Cups Coal Co., Inc.*, 707 F.2d 1253, 1261 (11th Cir. 1983). Because Toro did not raise its objection in the district court before the jury was excused, Toro's objection to the consistency of the verdict is waived on appeal.

Toro also appeals the denial of its motion for a new trial on the ground that the district court orally gave the jury confusing instructions. The jury instructions taken as a whole appear clear enough, but we need not decide the question in the most technical way. Pursuant to Federal Rule of Civil Procedure 51, an objection to a jury instruction must be made before the jury retires. *See McClow v. Warrior & Gulf Navigation Co.*, 842 F.2d 1250, 1253 (11th Cir. 1988). Toro did not object to the court's oral instructions and, in the absence of such an objection, we will reverse only where we find plain error. *Id.* Toro complains that the district judge told the jury that it should determine "whether the Toro Company was

negligent in designing the manufacturer of the lawn mower in a negligent condition." The written instructions, which Toro concedes were accurate and which were available to the jury during deliberations, said the issue was whether Toro "was negligent in designing or manufacturing the mower in an unsafe condition." ROA 3-99,9. We find no error in the judge's oral misstatement " 'so fundamental as to result in a miscarriage of justice.' " *Id.* (citation omitted).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 89-3764
Non-Argument Calendar

D.C. Docket No. TCA 88-40169

WHIPPLE VAN NESS JONES, JR.,
MARYANN CASSEAUX JONES, his wife,
Plaintiffs-Appellees,

versus

THE TORO COMPANY,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

Before FAY, EDMONDSON and COX, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT defendant-appellant pay to plaintiffs-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: May 24, 1990

For the Court: MIGUEL J. CORTEZ
Clerk

By: /s/ David Maland
Deputy Clerk

Issued as Mandate: Jun 20, 1990

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. TCA 88-40169

WHIPPLE VAN NESS JONES, JR.
and MARYANN JONES, his wife,
Plaintiffs,

vs.

THE TORO COMPANY,
Defendant.

VERDICT

WE, THE JURY, RETURN THE FOLLOWING VERDICT:

1. Did The Toro Company place the lawnmower on the market with a defect which was a legal cause of damage to Van Jones?

Yes No X

Answer question 2.

2. Was there negligence on the part of The Toro Company which was a legal cause of damage to Van Jones?

Yes X No

If your answers to both questions 1 and 2 were No, your verdict is for the Defendant The Toro Company and you should proceed no further but to date and sign this verdict form and return it to the courtroom. If your answer to either question 1 or 2 is Yes, please answer question 3.

3. Was there negligence on the part of Van Jones which was a legal cause of his damages?

Yes X No

If your answer to question 3 is Yes, answer question 4. If your answer to question 3 is No, skip question 4 and answer question 5.

4. State the percentage of any negligence which was a legal cause of damage to Van Jones, that you charge to:

Defendant The Toro Company	85%
Plaintiff Van Jones	15%
Total must be	100%

Please answer question 5.

5. What is the total amount (100%) of any damages sustained by each Plaintiff, caused by the incident in question.

Total damages of Van Jones	$1,058,000
Total damages of Maryann Jones	$ 150,000

In determining the total amount of damages, do not make any reduction because of the negligence, if any, of Van Jones. If you have found him negligent in any degree, the court in entering judgment will reduce plaintiff's total amount of damages (100%) by the percentage of negligence which you found is chargeable to Jones.

SO SAY WE ALL THIS —— day of ————, 1989.

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Foreman or Forewoman